

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 651                      Arboriculture

**SPONSOR(S):** Troutman

**TIED BILLS:**                                      **IDEN./SIM. BILLS:**

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on Agribusiness</u>	<u>9 Y, 0 N</u>	<u>Cunningham</u>	<u>Reese</u>
2) <u>Environment &amp; Natural Resources Council</u>	<u></u>	<u></u>	<u></u>
3) <u>Policy &amp; Budget Council</u>	<u></u>	<u></u>	<u></u>
4) <u></u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

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### SUMMARY ANALYSIS

HB 651 creates a voluntary licensure program for arborists 18 years of age and older. An arborist is a specialist in the care and maintenance of trees. This bill gives the Department of Agriculture and Consumer Services (department) the authority to implement its provisions, including creation of a licensure process, adoption of rules, and setting fees for licensure.

This bill provides an appropriation of \$200,000 from the Incidental Trust Fund of the Division of Forestry of the department to carry out the provisions of this act.

The effective date of this Legislation is July 1, 2008.

**There is an amendment traveling with the bill. The amendment is described in "Section IV. Amendment/Council Substitute Changes" of the analysis.**

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

Provides limited government—According to the Department of Agriculture and Consumer Services, one new FTE will be required to carry out the duties associated with creating a voluntary licensure program. This bill gives the department all powers and duties necessary to implement the provisions of chapter 598, including, but not limited to, the authority to adopt rules pursuant ss.120.536 (1) and 120.54, F.S.

Ensure lower taxes—The bill requires arborists to pay fees for licensure and to comply, when licensed, with the standards set forth in chapter 598, F.S. Arborists who do not comply may have their license suspended or revoked.

#### B. EFFECT OF PROPOSED CHANGES:

##### **Current Situation**

An arborist is a specialist in the care and maintenance of trees. Currently, there is no state regulation or licensure program for arborists in Florida. The International Society of Arboriculture estimates that the average fatality rate for all industries in the United States is four deaths per 100,000 each year. The fatality rate for those practicing arboriculture is 35 per 100,000 each year. The risk of an accident involving arboriculture is three times higher than that of police officers or firemen. One out of every 120 accidents involving arboriculture results in serious injury involving two or more days in the hospital or death.<sup>1</sup>

Although the equipment used in the practice of arboriculture has become safer, accident rates have increased. Accidents involving chippers are more deadly than accidents involving chainsaws. Each year in the United States, twenty-six thousand accidents involving chainsaws injure rather than kill.<sup>2</sup>

##### **Proposed Changes**

This bill creates Chapter 598, F.S., titled the “Florida Arborist Licensing Law.” The proposed law creates a voluntary licensure program for arborists and requires any person practicing or offering to practice arboriculture in this state as a licensed arborist to obey the requirements of this chapter for the well-being of the citizens of Florida. Persons practicing arboricultural activities are not required to be licensed in Florida to practice arboriculture under this Act, therefore, it is unknown how many of these members would decide to become licensed and have the “licensed Florida Arborist” designation.

The bill provides definitions for: “arboriculture or arboriculture services,” “department,” “landscape maintenance,” “licensed arborist,” “person,” and “practice of arboriculture.” The bill also gives the department all powers and duties necessary to implement the provisions of Chapter 598, F.S., including, but not limited to, the authority to adopt rules relating to:<sup>3</sup>

- Organizational and operational guidance, and requirements for licensing;
- Licensure process and renewals;
- Setting of fees for licensure and renewal; and
- Provision of a roster of licensed arborists.

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<sup>1</sup> Florida Chapter International Society of Arboriculture. <http://www.floridaisa.org/>

<sup>2</sup> ID.

<sup>3</sup>Pursuant to ss. 120.536 (1) and 120.54, F.S.

This bill provides guidelines for establishing the fees. The amount of the fees shall not exceed the cost of implementing, reviewing, or administrative processing of the particular activity or process. Fees shall be set according to the following schedule:

- A nonrefundable licensure fee not to exceed \$300;
- An annual renewal fee not to exceed \$300; and
- A fee for reactivation of an inactive license not to exceed \$100.

Fees collected under this chapter are to be deposited into the Incidental Trust Fund (ITF) of the Division of Forestry and be used to defray expenses associated with administration of the licensure program.

To receive a license an applicant must:

- Submit a written request for licensure and remit the nonrefundable fee;
- Furnish proof that she or he is at least 18 years of age;
- Disclose any act or offense or investigation of such act or offense in any jurisdiction related to the applicant's ability to practice arboriculture;
- Submit evidence of current certification by the International Society of Arboriculture (ISA);
- Provide proof of liability; and
- Submit a signed statement that the applicant will comply with current industry standards, including, but not limited to, ANSI Z-133-1 and A-300<sup>4</sup> series and any other related standards of the ISA and best management practices adopted by rule by the department.

The bill provides that the department shall not knowingly issue licenses to applicants under investigation for an offense relating to arboriculture in any jurisdiction and shall suspend or revoke the license of licensed arborists who do not comply with the established standards. A license shall be renewed if the arborist remains in compliance with the established standards. A licensed arborist must notify the department within 30 days of his or her primary place of practice if the address changes. Inactive, suspended, or revoked licenses shall be reactivated upon written request and approval by the department. Duplicate licenses must be marked "DUPLICATE" and the department is required to maintain a roster of licensed arborists.

Finally, the bill includes an appropriation of \$200,000 from the ITF to the department to carry out the provisions of this act.

#### C. SECTION DIRECTORY:

**Section 1:** Creates Chapter 598, F.S., relating to arboriculture, including ss. 598.001, 598.002, 598.003, 598.004, 598.005, 598.005, 598.006, 598.007, 598.008, 598.009, and 598.011, F.S.; provides a short title, a purpose statement, definitions, powers and duties of the department and rulemaking authority; establishes a fee schedule for licensure; provides for deposit and use of fee proceeds; establishes licensure procedures and requirements to practice arboriculture and provide arboriculture services; provides for license renewal and reactivation of a license under certain circumstances; and requires a roster of licensed arborists.

**Section 2:** Provides an appropriation.

**Section 3:** Provides an effective date of July 1, 2008.

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<sup>4</sup> Certification regulations and standards established by the Tree Industry Association (TIA)

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

See fiscal comments.

#### 2. Expenditures: According to the Department of Agriculture and Consumer Services,

##### A. Recurring

1. Positions	<u>FY 08-09</u>	<u>FY 09-10</u>	<u>FY 10-11</u>
a. Administrative Assistant II (0712)	\$44,732	\$45,627	\$46,539
<b>Total Salaries</b>	<b>44,732</b>	<b>45,627</b>	<b>46,539</b>
2. Expenses (**)			
Support Staff Expense Package	5,426	5,426	5,426
1 @ \$5,426			
Human Resources Allocation	398	398	398
1@ \$398			
Travel	5,000	2,000	2,000
Additional Supplies	2,000	500	500
3. AGMIC (***)	<u>5,000</u>	<u>5,000</u>	<u>5,000</u>
<b>Total Recurring Costs</b>	<b>\$62,556</b>	<b>\$58,951</b>	<b>\$59,863</b>

(\*\*) Expenses and Human Resources package total reflects one (1) position. Travel and supplies reflect travel for initial rulemaking development, initial workshop discussions, and for implementation of the program.

(\*\*\*) AGMIC costs reflect Oracle programming to develop software application to satisfy minimum estimated program requirements.

##### B. Non-Recurring

#### 1. Expenses

Support Staff Exp. Package	\$2,947
1 @ \$2,947	
2. OCO –All Staff- 1 @ \$1,000	<u>1,000</u>
<b>Total Non-Operating Costs</b>	<b>\$3,947</b>

**Non-Operating costs**

Administrative Overhead:	\$4,921	\$5,019	\$5,119
<b>Total Non-Operating Costs</b>	<u>4,921</u>	<u>5,019</u>	<u>5,119</u>
<b>Grand Total Costs (Incidental TF)</b>	<u><b>\$71,424</b></u>	<u><b>\$63,970</b></u>	<u><b>\$64,982</b></u>

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

## 1. Revenues:

See fiscal comments.

## 2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

Under the proposed licensure program, arborists are charged an annual fee to be licensed and must maintain ISA certification as well as appropriate levels of insurance.

**D. FISCAL COMMENTS:**

The bill includes an appropriation of \$200,000 from the Incidental Trust Fund within the department. An indeterminate amount of revenue may be collected and deposited into the ITF from the annual registration of an unknown number of arborists or arboricultural services providers voluntarily choosing to practice or offer to practice arboriculture as a "licensed Florida arborist" in Florida. The maximum initial license fee and annual licensure fee is \$300, with a \$100 reactivation fee applicable to inactive licensees. There are estimated to be over 2,000 Certified Florida members of the International Society of Arborists (ISA), which would generate from \$600,000 to \$850,000 of annual revenue if 100% of these members become licensed. ISA members are not required to be licensed in Florida to practice arboriculture under this Act, and as a result, may not be "licensed Florida Arborists." Therefore, it is unknown how many ISA members will decide to become licensed and have the "licensed Florida Arborist" designation.

**III. COMMENTS****A. CONSTITUTIONAL ISSUES:**

## 1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to require the counties or cities to spend funds or take an action requiring the expenditure of funds: reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

## 2. Other:

None

**B. RULE-MAKING AUTHORITY:**

This bill gives the department all powers and duties necessary to implement the provisions of chapter 598, including, but not limited to, the authority to adopt rules pursuant ss.120.536 (1) and 120.54, F.S.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**D. STATEMENT OF THE SPONSOR**

None.

**IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES**

On March 12, 2008, the Committee on Agribusiness considered and recommended HB 651 with a strike-all amendment. The differences between the bill and the strike-all amendment are as follows:

- The amendment excludes activities of a nursery. Nursery is defined as any grounds or premises on or in which nursery stock is grown, propagated, or held for sale or distribution, except where aquatic plant species are tended for harvest in the natural environment.
- The amendment specifies that licensed landscape architects may hold themselves out as state licensed arborists.
- The amendment defines "arborist of record" as a Florida licensed arborist in good standing employed by or contracting with a firm, corporation, partnership, employer or person and who supervises employees providing arboriculture services and issues authorization cards to persons performing services under his or her supervision.
- The amendment modifies the term "landscape maintenance" to specify "landscape tree maintenance."
- The amendment rewords the definition of "practice of arboriculture" to exclude landscape tree maintenance.
- The amendment adds authorization cards, and lost, destroyed or mutilated licenses to be included as a part of the licensure process.
- The amendment requires applicants for licensure to submit an application to the department that has been reviewed by the Florida Chapter, Board of Directors, International Society of Arboriculture, Inc. for compliance.
- The amendment adds that applicants employed by a statutorily recognized governmental entity shall not be required to carry errors and omissions insurance or liability insurance if the entity is self-insured. Also, within 30 days of the termination of the person's employment with the governmental entity, the person shall fully comply with the requirements of this subsection.
- The amendment modifies applicants "under investigation" to include any applicant who has committed an act or offense or who is under investigation pending its outcome.

- The amendment specifies that all final arboriculture papers or documents involving the practice of the profession of arboriculture under the supervision of a Florida licensed arborist of record must be dated and bear the signature and seal of the Florida licensed arborist of record who prepared, supervised, or approved the documents and who was responsible for the supervision of persons performing arboricultural services.
- The amendment changes the original appropriation from \$200,000 to \$72,280.00 for one position and the associated rates and expenses.